COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Investigation by the Department of Telecommunications and Energy on its own Motion into the Appropriate Pricing, based upon Total Element Long-Run Incremental Costs, for Unbundled Network Elements and Combinations of Unbundled Network Elements, and the Appropriate Avoided Cost Discount for Verizon New England, Inc. d/b/a Verizon Massachusetts' Resale Services in the Commonwealth of Massachusetts

D.T.E. 01-20

Motion by AT&T Requesting the Department to Establish

Reduced Charges for Unbundled Network Elements that would

Permit Competitive Entry, Before Supporting any Revised

Application by Verizon Massachusetts Under 47 U.S.C. § 271

Summary.

AT&T Communications of New England, Inc., - on behalf of itself and its affiliated companies that provide telephony or telecommunications services in Massachusetts (collectively "AT&T") - respectfully requests that the Department reduce the recurring charges that competitive local exchange carriers ("CLECs") must pay Verizon Massachusetts to obtain access to unbundled network elements ("UNEs") and combinations of UNEs, including the UNE Platform ("UNE-P"), to levels that comport with the Total Element Long-Run Incremental Cost ("TELRIC") methodology and that would permit economic entry by competitive local exchange carriers ("CLECs"). Furthermore, AT&T requests that such reductions be made before the Department

expresses support for any revised application by Verizon Massachusetts for authorization under 47 U.S.C. § 271 for permission to enter the long distance market. At the very least, AT&T requests that the Department not support any revised application unless and until all interested parties have agreed upon, and the Department has approved a reduced UNE-rate ceiling that would permit broad-based competitive entry.

AT&T is pleased that the Department has opened this adjudicatory proceeding to set new, TELRIC-based UNE rates. As AT&T and WorldCom have shown in submissions to the Department and to the Federal Communications Commission ("FCC"), the current UNE rates in Massachusetts are too high, do not comport with TELRIC, and pose an insurmountable barrier to UNE-based competition for services to residential customers. This new docket will provide an opportunity for the Department to fix these problems, and to establish competitive UNE rates in accord with TELRIC.

However, it is vitally important that proper rates be set, or at least agreed to on a negotiated basis, before any favorable recommendation is made or action is taken on a revised Section 271 application by Verizon for Massachusetts. When Verizon withdrew its first Massachusetts Section 271 application on December 18, 2000, FCC Chairman Kennard issued a statement indicating that before re-filing Verizon needs to address, among other things, "[p]ricing of elements used by competitors," in order to "ensur[e] that consumers in Massachusetts receive the benefits of full and open competition" in the local exchange market. To date, rather than actually fix the problems with its Massachusetts UNE rates that AT&T and WorldCom have identified, Verizon has instead tried to mask them. On July 24 and again on October 13, 2000, Verizon announced two sets of new UNE switching rates that were never subject to public investigation by the Department. Since then, Verizon has been engaged in a transparent public relations effort to claim that its UNE rates should no longer be at issue. Verizon's assertions are incorrect. As AT&T and WorldCom have shown in filings with the FCC, even the latest set of Massachusetts UNE switching rates remain excessive and still do not permit competitive entry. Furthermore, Verizon has not even ***proposed*** any reduction in its excessive loop rates. No Section 271 approval would be appropriate based on the current UNE rates.

Argument.

I. UNE Rates Must be Reduced to Competitive, TELRIC-Compliant Levels Before Verizon Obtains Section 271 Approval for Massachusetts.

A. Both Federal Law and State Policy Call For TELRIC-Compliant Rates that Will Permit Competitive Entry.

As the Department has recognized, Verizon is not entitled to Section 271 approval unless and until it can show that the Massachusetts local exchange market is "irreversibly open to competition." *Department's 271 Evaluation*(1) at 1, 408 (Oct. 16, 2000); *Department's 271 Reply Comments*(2) at 1 (Nov. 3, 2000). *See also FCC's NY 271 Order*,(3) ¶¶ 24, 429 (favorably quoting Department of Justice's Section 271 evaluation criterion). So long as Verizon continues to price UNEs at levels that preclude competitive UNE-based entry, local residential markets in Massachusetts will not and cannot be "irreversibly open," and Verizon therefore will not have complied fully with the requirements of checklist item two or the independent public interest standard.

The FCC has made clear that one of the requirements under the Section 271 checklist is that the applicant Bell Operating Company ("BOC") must offer TELRIC-compliant rates that realistically will permit competitive entry. In the FCC's words, "[i]n ascertaining whether a BOC has complied with the competitive checklist regarding pricing for interconnection, unbundled network elements, and transport and termination pursuant to section 251, ***it is critical that prices for these inputs be set at levels that encourage market entry***." *FCC's Michigan 271 Order*,(4) ¶ 289 (emphasis added). As the FCC explained:

Determining cost-based rates has profound implications for the advent of competition in the local markets and for competition in the long distance market. Because the purpose of the checklist is to provide a gauge for whether the local markets are open to competition, ***we cannot conclude that the checklist has been met if the prices for interconnection and unbundled elements do not permit efficient entry***. That would be the case, for example, if such prices included embedded costs. ***Moreover, allowing a BOC into the in-region interLATA market in one of its states when that BOC is charging noncompetitive prices for interconnection or unbundled network elements in that state could give that BOC an unfair advantage in the provision of long distance or bundled services.***

Id. ¶ 287 (emphasis added). Chairman Kennard's admonition that Verizon Massachusetts needs to address problems regarding current UNE rates must be read against the background of the requirement so clearly articulated here by the FCC.

This federal requirement that TELRIC-based rates must "be set at levels that encourage market entry" is consistent with the pro-competitive policies that the Department has pursued for many years. Chairman Connelly recently reiterated the Department's determination "to continue to promote the policy it adopted in 1985 - namely, to promote intraLATA competition in order to benefit Massachusetts consumers and the State's economy." *Letter from James Connelly to the FCC*, dated December 1, 2000. The Department cannot achieve this goal without setting UNE rates that permit competitive entry, and doing so before it recommends favorable action on any revised Section 271 application by Verizon Massachusetts.

In the ground-breaking 1985 decision alluded to by Chairman Connelly, the Department determined that competition would be superior to regulation as a means to achieving the Department's goals of economic efficiency and fairness in the local exchange market. However, the Department recognized that the elimination of legal barriers to competition in the intraLATA telecommunications markets would by no means automatically reduce or eliminate the market power held by the traditional monopoly service provider. It therefore expressly predicated reduction in regulation of a traditional monopoly carrier upon the development of competition for that carrier's services. DPU 1731, at 55 (1985).

Since 1985, the principles established by the Department in DPU 1731 have guided its regulation of the telecommunications industry in Massachusetts. For example, in January 1994 the Department stated that it "***remains fully committed to achieving a rate structure*** for NET [New England Telephone, now Verizon] ***that will enable greater competition in the telecommunications industry in Massachusetts*** so that the benefits of competition may accrue to the customers of NET." DPU 93-125 at 9-10 (1994) (emphasis added). In DPU 94-50, the Department again restated its commitment to pursuing regulatory policies that will advance the development of competition in the Massachusetts intraLATA telecommunications markets. In sum, the Department has repeatedly articulated its strong support for the development of competition in every segment of the telecommunication markets in Massachusetts, while recognizing that it use its regulatory authority to ensure that new entrants do not face unreasonable barriers to entry.

It is, of course, unfortunate that for years Verizon deliberately prevented the development of any significant residential competition in Massachusetts by ensuring that the UNE Platform is priced so high as to preclude competitive entry. This new docket provides an opportunity for the Department to correct this and other important pricing matters. It is important that it do so before Verizon is permitted under 47 U.S.C. § 271 to offer in-region interLATA services. Indeed, doing anything less would breach federal law and contravene state policy.

B. The Current UNE Rates For Massachusetts Remain Too High.

Fair and effective competition cannot develop in the local exchange marketplace unless UNE rates are set at a level that will allow CLECs to offer UNE-based services at competitive rates and still cover both the charges they must pay to Bell Atlantic as well as their internal costs. Current recurring charges for UNEs in Massachusetts are so high that full-scale UNE-based entry into the local exchange market by CLECs is not economically viable. Most of the initial residential competitive entry in New York has been by CLECs that purchase UNE-P from Verizon,(5) which means that they are leasing the local loop and local switching functions as a package. Massachusetts UNE rates make it impossible for CLECs to enter the residential market using UNE-P here. As discussed below, the current New York rates are the subject of an ongoing proceeding that the FCC anticipated,(6) and in which AT&T has shown that the current switching usage, port, loop, and transport rates which comprise the composite UNE-P rate are all far too high, and that even competition in New York is threatened if the UNE rates there are not lowered significantly. Thus, unless and until UNE rates are modified, CLECs will be improperly disadvantaged, and Massachusetts consumers will not experience the benefits of robust local exchange competition.

1. Verizon's latest switching rates are still excessive.

On October 13, 2000, Verizon filed and the Department approved an amended tariff that adopts (without any supporting documentation) switching and transport rates that are purportedly equivalent to the rates Verizon now charges in New York. Three days later, the Department opined that this filing "should put to rest any arguments that UNE rates in Massachusetts are not TELRIC compliant." *Department's 271 Evaluation* at 222. However, the Department reached this conclusion without any public investigation, and without affording CLECs any process in which to obtain relevant discovery and test, or in any way be heard on, these new rates. Instead, the Department reasoned that if these switching rates were previously good enough for Section 271 purposes in New York then they must be good enough now for Massachusetts. *Id. See also Department's 271 Reply Comments* at 52-53. This logic is flawed, and belied by facts not considered by the Department.

The current New York switching rates were set in the New York PSC's Phase I Order in Docket 95-C-0657, dated April 1, 1997, and were based on evidence presented in 1996.(7) The mere fact that those rates were found to be TELRIC compliant years ago in New York is not a sufficient reason to believe that they are appropriate for use in Massachusetts beginning in October 2000. To the contrary, information now available - but not reviewed by the Department before it filed its Section 271 Evaluation - shows that the current New York switching rates are much too high.

The fact that existing New York rates are uneconomic is undisputed. As Verizon's President and co-CEO stated with apparent glee just two months before Verizon adapted its New York switching rates to Massachusetts, Verizon's New York UNE prices are so high relative to its retail rates that no competitor can offer local service at a competitive price and make money doing so. Ivan Seidenberg told investment analysts that "leasing [Verizon's network elements] costs AT&T $22 per residential customer per month," so "whoever is buying [AT&T's] $24.95 [basic local services] product knows they're not making any money on it."(8) As Mr. Seidenberg recognized, CLECs incur their own internal start up systems and marketing costs and operational expenses on top of the cost of leasing UNEs.

Thus, the New York rates deny competitors the margins they need to offer local residential service profitably. Although the prices set in New York were sufficient to attract initial entry based on UNE-P, there is significant doubt about whether they are sufficient to sustain it. With experience, CLECs have learned that current New York rates are too high to do business without losing money.

We also now know why this serious problem exists in New York: the New York UNE prices are not economic because they substantially exceed proper TELRIC rates. In support of its position in the pending New York UNE cost case, Verizon filed an entirely new cost model in 2000. AT&T showed that Verizon used inappropriate inputs and made other adjustments to its model designed to inflate the resulting rates far above TELRIC levels. AT&T submitted a detailed analysis to the New York PSC showing that if the current Verizon model is corrected to use reasonable inputs and to take eliminate improper new adjustment factors, the corrected prices produced by Verizon's own model are far below the existing UNE rates in New York. For example, switching usage rates should be reduced by approximately 70 percent from current levels in order to approximate TELRIC. The current switch port and tandem switching rates are even more excessive on a percentage basis, again as shown by using the new Verizon model with corrected inputs.

In sum, currently available information demonstrates that existing New York switching rates are much too high, and will have to be reduced substantially in order to comport with TELRIC.(9)

2. Verizon has not even proposed to reduce its excessive loop rates.

AT&T and WorldCom have shown, in filings and presentations to the Department and to the FCC, that Verizon's existing UNE loop rates for Massachusetts are also excessive. The Department's original 1996 loop rates remain in effect: Verizon's October 13, 2000, tariff filing made no change in loop rates.

Loop rates, like all other UNE rates set by the Department, are substantially too high in Massachusetts in part because they are based on an exorbitant cost of capital. As AT&T explained in its March 2000 UNE rate petition, the Department's final cost of capital assumption resulted from two key errors. First, the Department assumed a very high cost of equity capital. In its Phase 4 Order in the *Consolidated Arbitrations* docket, the Department adopted a cost-of-capital methodology that produced a cost of equity capital equal to 11.38 percent. On reconsideration in the Phase 4-A Order, however, the Department chose to put aside the methodology it had adopted and selected 13.5 percent as the cost of equity capital for the purpose of calculating UNE rates. There is no evidence, however, that this higher number was based on TELRIC principles.

Second, the Department adopted a debt-to-equity ratio of 23.51 percent to 76.49 percent. The average debt-to-equity ratio in the other nine Bell Atlantic states that have made UNE rate decisions is approximately 40/60, a ratio that would comport with TELRIC. This is approximately the ratio that Bell Atlantic itself has used in recent cost-of-service filings. If the Department had maintained its original cost of equity capital of 11.38 percent, and had adopted a more appropriate debt-to-equity ratio of 40/60, the resulting weighted average cost of capital would have been 9.95 percent, rather than the 12.16 percent selected by the Department. The result is that all of Verizon's Massachusetts UNE rates, including its loop rates, are substantially in excess of TELRIC levels.

An excessive cost of capital is not the only cause of the excessive loop rates. In a December 4, 2000, *ex parte* filing with the FCC, WorldCom showed that existing loop rates would have to reduced by approximately 30 percent - or almost $4.50 per month on a statewide average basis - to correct not only for the high cost of capital but also for improperly low utilization factors and improperly high assumed costs for inputs such as poles, network interconnection devices, and cable.

Although Verizon made no proposal to import New York loop rates to Massachusetts, it is nonetheless worth noting that - as AT&T has shown in testimony before the New York PSC - when the new Verizon model is run using corrected inputs, it produces loop rates substantially lower than current rates. For example, the average rate for two-wire analog loops should be reduced by approximately 56 percent from current levels in order to approximate TELRIC. This is an independent indication that current loop rates in the region are excessive.

In sum, all of Verizon's Massachusetts UNE rates, and not just its switching rates, need to be revised in order to be made TELRIC compliant and to enable competitive entry.

C. It Would Be Inappropriate, and Inconsistent with Federal Law and State Policy, for the Department to Support a Revised Section 271 Application by Verizon Based on a Promise that UNE Rates Will Be Fixed at a Later Date in This Proceeding.

The mere fact that this docket has now been opened cannot justify deferral of UNE rate issues until after further action is taken on a revised Section 271 application for Massachusetts. As noted above, both the Department and the FCC have quite properly stressed the need to have in place all market-opening prerequisites, including proper wholesale rates, before Verizon is granted Section 271 approval or any other freedom from regulatory constraints in Massachusetts.

The circumstances in Massachusetts today are very different from those in New York in December 1999, at the time that the FCC was considering Verizon's Section 271 application for New York. In December 1999 in New York, the FCC found that there was "a thriving market for the provision of local exchange," that "[c]ompetitors in New York are able to enter the local market using all three entry paths provided under the Act," and that as a result "new entrants [were] serving both residential and business customers in geographic areas throughout the state." *FCC's NY 271 Order* ¶ 13. The FCC approved the New York 271 application in large part because it was persuaded that conditions in New York supported meaningful and broad-based competitive entry.

In New York, as the Department of Justice explained in its recent Massachusetts evaluation, "the use of the UNE-platform accounts for rapid CLEC expansion into the residential market." *DOJ Evaluation* at 6. In contrast, the levels of UNE-P entry in Massachusetts are trivial relative to the levels at the time of Verizon's Section 271 application for New York. *See Department's 271 Reply Comments* at 12. As the Department of Justice observed, "[t]he most plausible explanation for the limited use of the UNE-platform in Massachusetts appears to be the relatively high prices charged by Verizon for certain unbundled network elements, and there are reasons to suspect that in some cases those prices have not been based on the relevant costs of the network elements." *DOJ Evaluation* at 19. Since existing rates in Massachusetts continue to stifle competition, they must be reduced substantially before action is taken on any revised Section 271 application by Verizon.

Furthermore, we now have experience with the efforts by Verizon to *raise* rates in New York. Incredibly, at the same time that its President and co-CEO was crowing to the investment community that at current rates CLECs could not possibly make money with UNE-P, Verizon was filing testimony in an effort to push UNE rates even higher. It would be ludicrous to move forward on a revised Section 271 application in Massachusetts based on promises that UNE rates will be fixed later, only to allow Verizon to seek even *higher* UNE rates in this docket. For example, as of October 13 the Massachusetts monthly rate for an analog line port is $2.00. *See* Tariff DTE MA No. 17, Part M, Section 2.6, Page 7. Verizon sought to raise the New York analog line port rates by roughly to approximately 70 percent to $3.40 per month (there is some variance by density zone) in Case 98-C-1357. It would be the worst kind of regulatory gamesmanship for Verizon to argue that a revised Section 271 application should be approved, without committing itself to a binding ceiling on the level of UNE rates in the future.

II. A Proposal for Harmonizing Verizon's Desire to Obtain Section 271 Approval With the Need for Substantial Reductions in UNE Rates.

A. Unless Verizon Negotiates UNE Rates Acceptable to All Parties and Subject to True-Up If The Department Later Adopts Lower Rates, Department Support for Any Revised Section 271 Application Should Be Deferred Pending Completion of a This Case.

As the Department is aware, ten months ago on March 13, 2000, AT&T filed a petition asking the Department to review and reduce UNE rates to TELRIC-compliant, competitive levels. At that time AT&T explained that the existing UNE rates were too high, that currently available information shows that - notwithstanding the Department's best efforts back in 1996 - these rates in fact do not comport with TELRIC, and that this has serious public policy implications because the imbalance between excessive UNE rates and much lower Verizon retail rates would not permit competitive entry by CLECs wishing to serve the broad residential market. In its petition, at page 3, AT&T noted that:

Time is of the essence. It is very important that the Department correct this rate imbalance as soon as possible, and in any case that it do so before Bell Atlantic is permitted to offer interLATA long-distance services to Massachusetts customers. Indeed, Bell Atlantic cannot satisfy the statutory checklist under 47 U.S.C. § 271 until its recurring UNE charges are revised to bring them into compliance with the TELRIC methodology.

The petition was supported by the Massachusetts Attorney General and by other CLECs. By letter order dated July 27, 2000, however, the Department denied AT&T's petition.(10)

If the Department had opened this docket last year, it might well have finished an adjudicatory process resulting in reduced and lawful UNE rates. Indeed, AT&T had first urged the Department to undertake this task during 1998, in Docket 98-15. Verizon, however, steadfastly opposed all previous attempts to correct existing UNE rates in Massachusetts. The fact that Verizon fought to delay further investigation of its Massachusetts UNE rates is no reason for the Department to support a revised Section 271 application before the well-established problems with those UNE rates are fixed.

CLECs would be well within their rights under Section 271 to insist at this point that the Section 271 process should be halted until new permanent and fully TELRIC-compliant UNE rates are adopted and CLECs have had an opportunity to enter the market using those rates, whether that takes until the end of 2001 or longer. If Verizon is dissatisfied with such delay, it has only itself to blame.

But if Verizon wishes to accelerate the process, it could and should enter immediately into negotiations with *all* interested CLECs to establish a ceiling on UNE rates that would allow use of UNE-P to enter the residential market. To avoid future regulatory gamesmanship by Verizon, any such negotiated UNE rates must serve as a ceiling on future permanent rates, and should be subject to a true-up if the Department adopts lower UNE rates. In the absence of a negotiated agreement upon new UNE rates, however, there would be no factual basis upon which the Department could opine that Verizon's UNE rates can pass Section 271 muster, as discussed above. Thus, without an agreed-upon reduction in UNE rates, the Department should not support any revised Section 271 application until CLECs have had a reasonable opportunity to enter the market using new, permanent UNE rates that are put in place at the end of this proceeding.

According to the Department, the new switching rates announced by Verizon in July 2000 were the result of negotiations "between VZ-MA and Z-Tel, that … were undertaken … at the request of the Department, in order to facilitate Z-Tel's market entry." *Department's 271 Evaluation* at 221 (Oct. 16, 2000). This statement explains and underscores the market-affecting problem with these rates: they were adopted without any input from AT&T, WorldCom, or any potential entrant other than Z-Tel, and as a result they were not useful in making anything other than the type of niche offering Z-Tel said it wanted to make. The switching rates adopted unilaterally in October 2000 did not follow from any negotiations whatsoever, and as explained above they remain too high too permit broad-based UNE-P competition for residential customers.

Therefore, AT&T respectfully requests that the Department decline to support any new Section 271 application for Massachusetts until the Department has either completed its work in setting permanent, TELRIC-compliant rates, or has approved a negotiated UNE rate ceiling that would permit a broad-based UNE-P offering to residential consumers and has been agreed to by Verizon and all interested CLECs. It is crucial that all interested CLECs agree to the negotiated rates, because - as Verizon's negotiations last summer with Z-Tel demonstrate - Verizon has a strong incentive to negotiate UNE rates with those CLECs whose business plans calls for only limited use of UNEs. It is also critical that the negotiated rates establish a ceiling that will not be exceeded once permanent rates are set. Without the certainty of a rate ceiling on the crucial UNE inputs that CLECs must obtain from their principal competitor, no CLEC could afford to implement significant market entry. Rather, CLECs would be forced to wait until the conclusion of the permanent cost docket. By contrast, a mutually acceptable, negotiated price ceiling on UNEs could provide competitors with the prices and certainty needed to permit meaningful UNE-based entry even before the permanent cost docket.

B. The Department Should Undertake Retail Rate Rebalancing on a Parallel Track.

To ensure that Massachusetts consumers receive the benefits of robust local exchange competition, at the same time that the Department reduces UNE rates to TELRIC levels it should also make sure that Verizon's retail rates are not below cost. When the current price cap plan for Verizon was put in place, the Department truncated its previously ordered transition plan to increase Verizon's retail rates to economic levels. *See* D.P.U. 94-185 (May 12, 1995) at 129. *See also, id.* at 123, n. 79.(11) Later, the Department decided that price floor requirements could be satisfied by offering the retail service at wholesale rates. As a result of these two decisions, it became possible under the price cap plan for Verizon to charge retail rates that are *less* than the price of the network elements competitors must purchase to offer the same retail service. Facilities based competition evolving out of the purchase of unbundled network elements simply cannot occur under such circumstances.

As AT&T has shown in previous filings, Verizon's retail rates do not even comply with the Department's existing price floor requirements. On August 24, 2000, Verizon made a revised price floor filing, pursuant to directives in the Department's August 3, 2000, order, D.P.U./D.T.E. 94-185-E ("Price Floor Order"). In the Price Floor Order, the Department directed Verizon to make certain changes to the price floor calculations that it had filed on November 2, 1998. In filings with the Department in D.P.U./D.T.E. 94-185 on September 12, 2000, and on October 24, 2000, AT&T challenged Verizon's August 24 filing, pointing out five separate ways in which it did not comply with the Department's Price Floor Order.

Furthermore, the current price cap plan will end in August 2001. D.P.U. 94-185 (May 12, 1995) at 271-272. AT&T has previously urged the Department to establish a proceeding to consider the type of price cap plan that will allow Verizon pricing flexibility consistent with the degree to which competition actually exists, while at the same time creating a relationship between wholesale and retail rates that does not impose - as it now does - a price squeeze that precludes facilities based competition.

The Department recently found that "further investigation is warranted" regarding whether Verizon's retail rates comport with the Department's existing price floor requirements, and concluded that "the Attorney General and AT&T's suggestion that the Department convene a working group or technical session to begin discussion of the form of alternatives that will replace the price cap is well taken." *See* DTE 00-101, *Interlocutory Order on Suspension of Verizon Massachusetts' Sixth Annual Price Cap Compliance Filing* (December 14, 2000). Given that the current price cap plan will end this year, and given that the Department has now commenced this review of UNE rates, AT&T respectfully suggests that the time has come for retail rate rebalancing.

Conclusion.

AT&T files this motion in a constructive effort to help solve the current quandary regarding UNE rates in Massachusetts. Reduced UNE rates are desperately needed in Massachusetts, for there will be no meaningful UNE-based local competition without them. AT&T respectfully asks the Department not to support Verizon's 271 application until the Department has set fully TELRIC-compliant rates for all UNEs, and CLECs have had a reasonable time to enter the market based on those rates.

Alternatively, AT&T proposes that the Department urge Verizon to negotiate with all interested CLECs to reduce UNE rates to a mutually acceptable level, with that level to serve as a ceiling on future permanent rates, and subject to a true-up following completion of the permanent cost docket if rates are set below the agreed-upon ceiling. The Department could then rely on the existence of these negotiated rates as a basis for supporting Verizon's renewed Section 271 application in advance of the completion of the permanent cost docket, once CLECs have had a reasonable time to enter the market based on those rates. However, without an agreement regarding UNE rates, there is no factual basis upon which the Department could support, or the FCC could approve, a revised Section 271 application for Massachusetts until after the Department completes its full investigation in this docket and new, permanent UNE rates are established.

Finally, AT&T also respectfully urges the Department to address the need for retail rate rebalancing concurrently with its investigation and establishment of permanent reductions in UNE rates.

Respectfully submitted,

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January 16, 2001.

1. 1 "Evaluation of the Massachusetts Department of Telecommunications and Energy," *In the Matter of Application of Verizon New England, Inc., et al., for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Massachusetts*, CC Docket No. 00-176 (filed October 16, 2000).

2. 2 "Reply Comments of the Massachusetts Department of Telecommunications and Energy," *In the Matter of Application of Verizon New England, Inc., et al., for Authorization Under Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services In Massachusetts*, CC Docket No. 00-176 (filed November 3, 2000).

3. 3 *In the Matter of Application by Bell Atlantic-New York for Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, CC Docket No. 99-295, "Memorandum Opinion and Order" No. FCC 94-404, (released Dec. 22, 1999).

4. 4 *In the Matter of Application of Ameritech Michigan Pursuant to Section 271 of the Communications Act of 1934, as amended, To Provide In-Region, InterLATA Services In Michigan*, CC Docket No. 97-137, "Memorandum Opinion and Order" No. FCC 97-298 (released August 19, 1997).

5. 5 *See* Consent Decree No. FCC 00-92, *In the Matter of Bell Atlantic-New York Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-IH-0085, at ¶ 7, fn. 21 (March 9, 2000) ("Competing carriers are using UNE-Platform as the primary vehicle to provide competitive local service to residential and small business consumers in New York State.").

6. 6 At the time of the FCC's decision regarding the Section 271 application by Verizon New York in December 1999, the New York Public Service Commission was embarking on a new proceeding to correct its UNE rates, and had determined that the then-current charges would be subject to a true-up once the new rates were set. *See, e.g., FCC's NY 271 Order*, ¶¶ 247, 259.

7. 7 *Opinion and Order Setting Rates for First Group of Network Elements*, Case Nos. 95-C-0657, 94-C-0095, 91-C-1174 (NYPSC April 1, 1997) (*NYPSC Phase I Order*).

8. 8 Krause, "Verizon's New York Fight Key To AT&T Challenge," Investor's Business Daily, August 15, 2000, Section A, p. 6.

9. 9 The Department has resisted calls to revisit UNE rates based on new information, reasoning that doing so would result "in a constant cycle of doing and redoing a TELRIC analysis - much like the Navy starting to repaint at the bow of the ship as soon as it finishes painting the stern." *Department's 271 Evaluation* at 215. This analogy is not apt, and its logic is flawed.

It may be correct that just as the Navy aims not to be continually painting the same ship, so too the Department should aim not to be continually reviewing UNE rates. However, if the Navy paints a ship expecting the job to last for five years, and discovers after only two years that the paint on the bow is peeling badly and allowing the ship to rust, the Navy would conclude that the ship needs repainting much sooner than anticipated based on this new information and set about to make repairs. Similarly, if the Department discovers that UNE rates it had expected to be a reasonable approximation of TELRIC costs for five years turn out to be woefully excessive after a couple of years of experience on the seas of the local telecommunications markets, the Department should fix the rates to permit competitive entry without delay.

Alternatively, if for some time the Navy had been using paint that previously met its technical standards, but now with experience it learns that the paint wears poorly, it would not use the same paint on other ships. By the same token, UNE rates that once were believed to be appropriate in New York should not merely for that reason also be adopted in Massachusetts, especially where Verizon's CEO acknowledges that the New York rates are not economic and current information shows that they no longer comport with TELRIC.

10. 10 As part of its explanation of why it chose not to revisit UNE rates before now, the Department has asserted that "AT&T's own witness in an earlier proceeding supported a five-year review." *DTE Evaluation* at 216 (submitted to the FCC on October 16, 2000). This is not a fair summary of this testimony. The relevant testimony was by AT&T's witness Janusz Ordover in Docket 98-15, on September 24, 1998. *Cf.* Docket 98-15, Phase II-III Order at fn. 17 (March 19, 1999). The Department is referring to the following exchange, which appears at page 60 of this transcript:

Q. How often do you believe the Department should revisit the UNE rates?

A. I would hate to recommend a fixed number. The Department is comfortable with revisiting the price caps in Massachusetts every five years. Maybe that's the right place to start from. I would say that it may depend on the extent to which there are substantial, quote-unquote, "shocks" to the system. There's a great deal of technological change. Or if it turns out that the cost of capital that was awarded is out of line up or down, the fill factors have changed significantly, there's maybe a lot of stranded assets out there, the Department may decide to revisit the issue. But I certainly do not recommend that every year we get together in Boston and rehash that, although I like Boston a lot.

But on redirect (page 62), Dr. Ordover further explained as follows:

Q. The second question, Dr. Ordover: With respect to the frequency or infrequency with which the Department ought to reconsider UNE rates, were you meaning to suggest that the Department should leave in place the current interim UNE rates for a period of up to as long as five years before taking another look at the interim UNE rates?

A. No, I wasn't suggesting any such thing. I was saying that in fact the Department is now well poised to review those rates in light of the changing input prices as well as in light of the new knowledge that has been accumulated up and down New England and elsewhere in the country regarding how this methodology ought to be deployed.

In sum, Dr. Ordover testified quite clearly in September 1998 that the Department should *not* wait any longer before revisiting and reducing UNE rates, and should *not* let current UNE rates stay in place for five years, because new information available since the setting of Massachusetts UNE rates in 1996 now made clear that those rates were much too high.

11. 11 The Department stated: "The current residential dial-tone line monthly rate is $9.91, and the Company has proposed to freeze that rate, among others, until August 2001 … Under the transitional rate-restructuring, the residential dial-tone line monthly rate would have increased to the target rate of $15.00 in two additional transitional filings." *Id*. (citations omitted).